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Current Topics.

Hilary Law Sittings.

A SUBSTANTIAL increase in the number of appeals and a decrease in the number of actions for trial are the features of the High Court lists for the Hilary term, which commenced on Monday, 11th January. The total number of appeals is 155, as against eighty in the corresponding term of last year. There are ten final appeals from the Chancery Division, as against four last year, and fifty-nine from the King's Bench Division, as against thirty-five last year. Revenue appeals have risen from six to twenty-one and county court appeals from twenty-three to thirty-three. The remaining number are made up of workmen's compensation appeals, Probate, Divorce and Admiralty appeals, and one appeal from the Chancery Court of the County Palatine of Lancaster. There are 357 actions set down for hearing in the King's Bench Division, as against 418 last year. There are only two special jury actions, the remainder being made up of 121 long non-jury actions and 222 short non-jury actions. There are four short causes and eight actions in the commercial list. Last year the figures were two special juries, 131 long non-juries, 256 short non-juries, fifteen commercial causes and fourteen short causes. The total number of matters and causes for hearing in the Chancery Division is eighty, as against 132 in the previous year. There are twenty-four causes in the Non-Witness List, as against fifty-three last year. This will be taken by BENNETT, J., and UTHWATT, J. The twenty actions in the Witness List (sixty-one last year) will be taken by SIMONDS, J., and MORTON, J. There are twenty-seven assigned and retained matters (the same number as last year) and there are fifty-nine company matters (an increase of three) to be taken by BENNETT, J. The total number of matters in the Divorce Division is 2,250, as against 1,384 last year. Of these, 872 are defended, as against 528 last year. There are ten Admiralty actions, as against thirteen last year. The Divisional Court list shows an increase of nineteen, to 122. This consists mainly of the forty-three appeals in the Revenue Paper, as against forty-two in the preceding year.

The Bar Council Report.

THE annual statement for 1942 of the General Council of the Bar records that during the year close touch has been kept with the Lord Chancellor's Committee on Appointments, and the names of barristers have been supplied on several occasions to inquirers. Barristers who desire appointments and are over forty-one or ineligible under the Military Service Acts are asked to forward their names and the necessary particulars to the Secretary. The Army Legal Aid Scheme has now been extended to the R.A.F. and the W.A.A.F., and the Home Command Legal Aid Sections are controlled by serving barristers and solicitors, and both serving and other barristers and solicitors have generously offered their services in the voluntary part of the scheme, namely, in giving free legal advice to the legal advice bureaux set up by the units and formations. The report also records that members of the Bar have continued to give their services voluntarily in the War Office Vocational Correspondence Course Scheme for members of H.M. Forces, and that a Bar examination has been held by the Council of Legal Education in prisoners of war camps in Germany. A point which may be of interest to solicitors as well as barristers is made by a question which the Council put to the authorities with regard to the limitation placed upon the insurance of law books over fifty years old. The Council states that notice has been received that an order has been made extending the period of fifty years to 100 years, and that furthermore if a member of the Bar is still prejudiced in respect of the loss of his law reports by the operation of the limitation in the policy, individual cases will be sympathetically considered by the government department concerned. Another point which may interest solicitors is the statement that the Council has ascertained after inquiry that the practice with regard to clerks' fees allowed in criminal cases varies considerably, and depends on the regulations or customs of the particular court, and the same applies to refresher fees. Where this conflicts with the ruling in the Annual Statement for 1927 the latter is abrogated.

The Avoidance of Litigation: A Treaty.

AN important agreement between His Majesty's Government in the United Kingdom and the United States Government was signed on 4th December, 1942, and was recently published with the notes exchanged between the Foreign Office and the United States Embassy on the same day. The agreement relates to marine transportation and litigation. Article 1 provides that each contracting government waives all claims against the other for negligent navigation or general average in respect of cargoes, freights and vessels, as well as claims for salvage services, loss or damage to cargo or vessels arising out of shipment or carriage of cargo, and claims by virtue of subrogation in respect of any vessel or cargo insured by the contracting government. The agreement may be extended to other maritime claims from time to time. Article 2 provides for the case where claims which are not required to be waived arise in addition to or in conjunction with claims which are required to be waived. In such cases the agreement does not apply if it is necessary in any proceedings, including proceedings for the limitation of liability, that claims should be marshalled, or for the proper assessment of salvage or general average that values should be estimated. Any recoveries, however, must be waived by the government entitled to such recoveries or, at the option of such government, must be dealt with in such other way as will give effect to the purposes of the agreement. Article 3 contains a definition of "vessel owned by a contracting government," and art. 4 provides for conditions on which each contracting government, at the request of the other, will provide undertakings for the release of vessels or cargo owned by the other contracting government from judicial proceedings in courts in the United States of America or in the United Kingdom, as the case may be, where such release will promote the war effort. The conditions are (*a*) upon tender of a request, due authority will be conferred by the government interested in the vessel or the cargo upon the law officers of the government furnishing the undertaking to appear on their behalf and to conduct the defence of such proceedings, to settle or compromise any such suit, to assert or settle and compromise any claim by the requesting government, and to make and receive payments in respect thereof; and (*b*) the requesting government will assure the other government of its full co-operation in defending and asserting claims, including the making available of witnesses and evidence in preparation for trial. Nothing in the agreement is to be construed as a waiver of the right of either contracting government in appropriate cases to assume sovereign immunity. The agreement came into force on the date of signature and applies in respect of all claims arising before that date, but remaining unsettled at that date, or arising during the currency of the agreement. It is to remain in force until the expiration of six months from the date upon which either of the contracting governments gives written notice of their intention to terminate it. The agreement secures that all salvage services will in future be rendered on lend-lease terms, so that ships will be brought back into service as soon as possible.

Law and War in Australia.

THE brotherhood of the Dominions with the mother country does not rest merely on formal declarations such as the Statute of Westminster, but also on the remarkable parallelism that exists between the life, law and institutions of the constituent

parts of the British Commonwealth of Nations. Looking at the issue for 2nd November, 1942, of *The Law Institute Journal*, the official organ of the Law Institute of Victoria and of the Queensland Law Society Incorporated, a lawyer in this country must be struck by the similarity of approach to war-time problems between the professional and lay community of this country and of Australia. The annual report of the Council, which is published in that issue, is, it is interesting to note, the eighty-third report since the formation of the Institute. It is also noteworthy that on 30th September, 1942, the number of applicants who had received attention under the Institute's legal aid scheme amounted to 4,568. Advice on the legal problems of the applicants is given free. In the main this is limited to their private or business interests, with particular reference to the effect of enlistment upon those interests, and the necessary adjustments called for by the change from civil to military life. While generally speaking, the Council does not consider that the conduct of litigation on behalf of applicants should fall within the scope of the scheme, it feels that in exceptional cases which appear deserving, litigation should be undertaken. The report states that the Law Societies and Institutes in other States render legal aid to members of the Forces, and co-operate with the Institute when the services of an inter-State solicitor are required. A pleasing note is struck by the announcement that the Council would be pleased if legal members of the United States Army would make use of the Institute's rooms and library. That library, according to the report, has recently acquired, *inter alia*, an edition of the "Encyclopædia of the Laws of England," as well as a number of "Famous Trials," such as those of Harold Greenwood and Buck Ruxton. The Committee of the Institute apparently has similar powers to those of the Council of The Law Society in this country, as it is announced that they will advise the Deputy Director-General of Man Power not only on applications relating to military service, but on applications for exemption from any other service or duty for which solicitors and their staffs may be liable to be called up. It is also interesting to read the notes of Australian war legislation and to trace the parallelism at most points with that of this country. Nothing, we feel sure, is of greater value in strengthening the consciousness of the real solidarity between the component states of the British Commonwealth of Nations than the interchange of news of each other's activities. Nothing, moreover, can be more helpful to the professional bodies and other services operating in the different countries than the spreading of the knowledge of each other's methods of tackling similar problems.

Double Penalties.

SOME difference of opinion between the courts and the government departments is inevitable in time of war, when administrative powers are necessarily increased. Mr. PAUL E. SANDLAND, K.C., the Recorder of Leicester Quarter Sessions, recently stated, referring to the action of a government department, that he did not consider that anyone should be penalised twice for the same offence. The case was one in which a limited company dealing in poultry and fish, and its managing director, had been fined £6,150, with £210 costs by the magistrates in petty sessions, for offences against the poultry and fish orders. On appeal the penalty was reduced to £1,746, including costs. The food committee subsequently recommended that the company's trading licence should be withdrawn, and this recommendation was approved by the Ministry of Food. So far as his court was concerned, the Recorder stated that any sentence passed would be suspended and would not be enforced until the licensing authorities had made up their minds whether they would take away the trader's licence or not, as the court's penalty was intended to be conclusive, and the fine would have been a nominal one if the court had been informed that the trading licence was involved. The power of the Food Control Committee to revoke a trader's licence is stringent, and no doubt necessary in war time. But it is submitted that it is essential if justice is to be done, that a court should be informed of the intention of the food committee in this respect, as a relevant circumstance to be taken into account in imposing penalties.

War Injury Compensation.

SOME interesting information was forthcoming in the evidence given on 6th and 7th January, before the Select Committee of the House of Commons on equal compensation for war injuries for men and women. On 6th January, evidence was given by the heads of three women's services, and the chairman, Mr. HENRY WILLINK, K.C., M.P., said that some members were surprised that the compensation for 100 per cent. disablement for an A.T.S. officer with the rank equivalent to a warrant officer in the army was less than that of a private soldier or a boy in the navy. Mrs. V. LAUGHTON ANDREWS, Director of the W.R.N.S., said that the Admiralty's official view was that compensation must be related to pay, but she herself favoured equal compensation. In certain branches of work there were reasons for men being paid more than women, but there was no reason for men being compensated more. From the human point of view an injury might be even more serious for a woman than for a man. Mrs. JEAN KNOX, Chief Controller of the A.T.S., expressed the same view, and Air Commandant TREFUSIS FORBES, Director of the W.A.A.F., said that the question of equal compensation had never been raised in that service so far as she knew. Mr. WILLINK said that if a W.A.A.F. and her civilian sister were simultaneously disabled by the same bomb, it would be odd if the civilian sister were compensated at a considerably higher rate than the W.A.A.F. On 7th January, Miss CAROLINE HASLETT, Chairman of the British Federation of Business and Professional Women, said that women engaged in professional occupations in Britain exceeded men in number by 35,390, according to the 1931 census, the number of women being 438,236 and the number of men 402,306. In the major civilian professions women received largely the same remuneration. If a business woman and a business man both lost their businesses and a limb in an air-raid, the woman received the same compensation for the loss of her business as a man, but less for the loss of her limb. The fact that there is such a large number of women in the professions is not generally appreciated. In the legal profession at any rate, though their progress towards recognition has been somewhat more protracted than in the case of some others, their claim to equal remuneration has never needed to be raised, because it has never been doubted. Under the capable chairmanship of Mr. WILLINK we can be confident that the Select Committee will reach an equitable conclusion.

Salvage.

TO those who are bent on doing their utmost to help in destroying Hitler the salvage campaign clearly takes its place as a vitally necessary part of the whole scheme of victory. In a statement to *The Times* on 7th January, the Principal Director of Salvage and Recovery gave some encouraging figures of the success of the campaign. He said that in the first year of the war the amount collected by local authorities amounted to 774,452 tons, in the second year 1,053,016 tons, and in the third year 1,438,538 tons. By the end of 1942 the number of salvage stewards enrolled on a voluntary basis was 130,500, of whom 120,500 were operating at the present time. In one direction, however, the salvage authorities had had a disappointing experience, and that was in regard to waste paper. Lately especially, in spite of orders imposing penalties, there had been a fall from grace, and the careless disposal of paper was becoming a serious problem. Official examples of how economies may be effected are not entirely wanting, and telephone subscribers, who in future will pay their accounts half-yearly, instead of quarterly as hitherto, will, if they are wise, regard this as a stimulus to paper economy rather than as a concession to their financial embarrassments. Half the quarterly accounts, roughly a million, which are due to be issued this month, will be rendered on the existing basis, but after this accounts will be rendered in July and January to those persons. The others will be notified that their accounts will be rendered in April and October. Solicitors will be the first to confess that they are human and therefore prone to error, and that a consistently high standard cannot be maintained over a long period. They realise, however, that the attempt must be made to reach the highest possible standard in regard to the saving of paper, because of its vital importance as a munition of war.

A Fuel Economy Order.

THE new Control of Fuel (No. 3) Order, 1942, consolidates the Waste of Fuel Order, 1942, and the Control of Fuel Order, 1942, and gives the Minister of Fuel and Power drastic new powers to secure fuel economy, particularly by private consumers. The order came into force on 1st January, 1942. Under it the Minister may give directions as to the manner in which fittings and appliances consuming fuel are to be used. He may prohibit their use either generally or by any class or description of persons, and he may also restrict the premises in or at which the appliances may be used. It is also provided that one of the conditions under which fuel shall be deemed to be wasted is the use or consumption of an excessive quantity of fuel in any period in any premises. Proceedings may be taken against the occupier of the premises where the quantity of any fuel used in any period exceeds the quantity used in the most nearly corresponding period of the preceding year, but it will be a defence to show that some corresponding saving in other fuels has been effected, or that circumstances have changed to such an extent as to justify the change. Persons properly authorised on behalf of the Minister are empowered to require information, to enter on and inspect premises and to inspect and test fuel fittings and appliances. The order does not apply to fuel used for the propulsion of mechanical vehicles, as that comes under the Motor Fuel Rationing Order. The consumption of fuel for commercial advertisements is prohibited. Previously, under the Waste of Fuel Order, 1942, the consumption of fuel for the purpose of advertisements inside any premises was prohibited. The Minister has explained the necessity of the new power to control the use of fittings and appliances by stating that he can now, for example, control the use of radiators in unoccupied rooms and corridors while making possible their use in occupied rooms.

Post-War Credits.

WE understand that statements have appeared in the daily press to the effect that certificates issued by the revenue authorities in respect of post-war income-tax credits have been handed over to moneylenders in return for immediate payments. Apparently some of those transactions are in the nature of outright sales and in others the certificates are " pawned," that is, made security for loans. In either event the person receiving the certificate obtains no legal rights whatever, save where the person parting with it is the personal representative of a deceased person acting in his capacity as such and where the assignee can prove that fact.

Section 6 of the Finance Act, 1941, reduced the amounts of the reliefs allowed to income-tax payers, namely, the " allowances " in respect of the first £165 of taxable income, personal allowances and the allowance for earned income. By s. 7 (1) it is laid down that in every year in which s. 6 operates the authorities are to ascertain and record the amounts payable by each taxpayer in consequence of the operation of s. 6, other than the extra sums paid on the first £165 of taxable income. " The amount so ascertained and recorded " is to be notified to the taxpayer " and shall be credited to him on such date as may be fixed by the Treasury, being a date as soon as possible after the termination of hostilities in the present war."

This subsection creates no debt due from the Crown : it directs nothing to be paid, but only that an amount shall be ascertained, recorded, and notified, and that such amount shall be " credited " at an uncertain future date.

Subsections (2) and (3) provide for certain ancillary matters and for the making of regulations governing the procedure to be adopted. The certificates are, no doubt, issued under such regulations : but they do not affect the substance of the matter as set forth in subs. (1). As is stated on the certificate, it is merely a statement of what has been recorded under subs. (1). It is, in fact, the " notification " directed by the subsection, and nothing more.

Subsection (4) provides that : " Any assignment of or charge on any amount to be credited under this section, and any agreement for such assignment or charge, shall be void, and any such amount shall be exempt from death duties payable on any death occurring before the date fixed by the Treasury under subsection (1) of this section ; but any claim to any such amount shall, subject as aforesaid, be transmissible as if it were a debt due from the Crown, and references in the foregoing provisions of this section to an individual, a man or his wife, shall except where the context otherwise requires be deemed to include references to persons claiming through or under them respectively : provided that nothing in this subsection shall affect any assignment or charge made by the personal representatives of any person acting in their capacity as such, or any agreement for any such assignment or charge."

The effect of this provision is clear : it is to prevent any dealings whatever with the sums which are to be credited, until the date fixed by the Treasury for them to be credited. The only exception is that the sums may be dealt with on the death of the taxpayer as part of his estate. The sums are not debts, since nothing is at present owing under subs. (1), but they are given the status of debts due from the Crown for purposes of such transmission of them as the subsection allows. Thus on the taxpayer's death they form part of his estate. They can be bequeathed as if they were choses in action, or they can pass with the other personalty on an intestacy, and the personal representative can give effect to the legacy, or to the provisions of the Administration of Estates Act, 1925, in the ordinary way by an assent. So as to evidence the validity of the transaction such assent should be in writing, and should include a recital of the death of the taxpayer and of the grant of probate or administration to the persons making the assent. The personal representatives can also sell or charge these amounts in the performance of their duties as personal representatives, and they can execute any consequential document of assignment or charge ; such a document should, of course, be written, and should contain the recitals suggested above. These sums are exempt from death duties on a death before the date fixed for the sums to be credited, and therefore on such a death they are not to be subjected to any legacy or succession duty, nor must they be aggregated for the purposes of, nor charged with estate duty.

But all other assignments or charges or agreements to assign or charge are absolutely void. And since the rules relating to personal representatives are introduced by way of exception to a general avoidance of dealings, a person who seeks to show that he claims by reason of a permissible dealing will have to discharge the onus of proof that he falls within the proviso. Ingenious attempts will no doubt be made to evade these comprehensive and well-drafted rules, but in our opinion the courts will look to the substance of the transaction and the attempts will fail. We believe that in some cases a sum of £5 has been lent on the " security " of a certificate for £50 : that is £5 more than such a certificate will actually secure. If the transaction is one of " purchase," it is of no effect and the purchaser is £5 the poorer. The too-clever lenders and purchasers have on this occasion overreached themselves.

A Conveyancer's Diary.

1942. Chancery—II.

I TURN next to a few cases on the Landlord and Tenant (War Damage) Act, 1939, and its effects. It is a subject which I approach with some hesitation, as it is, of course, more within the scope of an adjacent column than of this one. On the other hand, it is one which touches and concerns conveyancing closely, and I do not think that this review would be complete without mention of it.

In *Johnstone* v. *Swan Estates, Ltd.* [1942] Ch. 98 ; 86 SOL. J. 13, the tenant of a flat in a well-known block in Chelsea took out a summons asking whether he was entitled to exercise an option, conferred by his lease, to determine the tenancy in the event of " the flat or other parts of the mansion being destroyed or damaged by any means not arising from the act or default of the lessee . . . so as to render the flat unfit for occupation." Bombs having descended in Chelsea, parts of the block were destroyed or damaged. It was common ground that the plaintiff's flat had not itself sustained physical damage, but, to use the learned judge's words (at p. 104), " as a result of damage to other parts of the mansion (this flat) was totally without heat or artificial light of any kind, without cooking facilities and without hot water or the means of heating water, and the lessee was precluded by a covenant in the lease from permitting coal or coke to be delivered at the flat. Further, the lessee, who lived on the eighth floor of the building, was unable to use the lift." On these facts the learned judge held that the flat was unfit for occupation within the meaning of the option to determine, since " the meaning of those words in the clause must be considered in relation to the subject-matter of the demise . . . The lessee might have brought in a stove for cooking purposes and, I suppose, might have procured candles to light the flat, if he were able to buy them, or an oil lamp, if he were able to buy it, but that was not the kind of occupation which the parties contemplated " (at pp. 104, 105). It is difficult to see any answer to this reasoning. The lessors took the point, however, that the tenant had first given a notice of disclaimer under the Landlord and Tenant (War Damage) Act, 1939, which they had declined to accept, and that he had only sought after that to exercise the option reserved in the lease. They tried to say that this procedure was an attempt by the lessee to " approbate and reprobate " and so was inadmissible ; for this contention they relied on *Cooper* v. *Jax Stores, Ltd.* [1941] 1 K.B. 577 ; 85 SOL. J. 213, a decision on quite a different point under the same Act, and one which Morton, J., had no hesitation in holding to be inapplicable. It certainly seems very extraordinary that the lessors troubled to fight this case, since one would have thought that the tenant was clearly entitled to disclaim under the Act, quite apart from the option. The truth is that in the stress of the last months of 1940 many people had not time really to understand the positions created by bombardment.

A similar observation applies to *Meye* v. *Electric Transmission, Ltd.* [1942] Ch. 290. This was a case where a factory had been badly damaged by bombing, but where the tenants and their workmen gamely carried on. As Bennett, J., said in a part of his judgment which is not reported, the British people were determined in the autumn of 1940 not to be prevented by German bombs from doing their work. Notice of disclaimer was given and the tenant's right to give it was not contested, though, as matters turned out, such an attitude on the part of the landlords might well have succeeded, if taken within the very short time allowed by the Act. The tenants did not vacate the premises, however, for about five months, and shortly after disclaimer letters were exchanged between the parties' solicitors in which the landlords agreed to allow the tenants to stay in " as trespassers." The legal effect of these letters is stated by Bennett, J., as follows : " Paradoxical as it may seem . . . these letters created a contractual relationship of landlord and tenant, the tenancy being a tenancy at will and the rent being equivalent to the sum which would be awarded as mesne profits " (at p. 292). That being so, the learned judge awarded the plaintiff a sum calculated by reference to the valuation made for rating purposes after the bombing, the actual amount being the proportion of the annual value appropriate to the period during which the tenants had remained in possession after disclaimer. That was the substance of the case, and since the tenants had offered a much smaller sum, the landlord was awarded costs. The lesson of the case is that a person staying on after disclaimer is in just the same position as anyone else who holds over. If he does so without the leave of the landlord he is a trespasser. If he has leave but nothing more he is a tenant at will. No doubt if rent is afterwards paid and accepted by reference to a year, he will become a tenant from year to year in the ordinary way. The report in the Law Reports is not very clear, for it only explains the single point on which the case was reported, which was that the plaintiff tried to argue that the circumstances set out above, plus the fact that the landlord demanded (and was refused) a quarter's rent at the old rate at the next quarter day, made the tenant a tenant from year to year. This argument failed, and as the case is reported only on that point the concluding words of the reported judgment in which the plaintiff

was given £75 and costs are, I am told, regarded as mysterious by some readers. I have also seen it suggested that the landlord should have pressed for rent at the full rate reserved by the lease to be awarded in respect of the tenancy at will on the principle of *Morgan* v. *William Harrison, Ltd.* [1907] 2 Ch. 137. In fact this relief was claimed, but the court did not take the view that such a basis was correct in a case where the property in which the tenant was holding over was substantially less valuable, owing to the bombing, than it had been during the currency of the lease itself. I have discussed this case at some length, going outside the reported point, because I have found that the report is not fully understood; the foregoing is written on information which I have been able to acquire as to the course which the case took. No doubt the reported point, on the question of tenancy from year to year, is the most interesting one jurisprudentially; but the rest of the case is just as relevant to a consideration of the practical results of war damage, which is our subject in this "Diary."

Finally, there is the important decision of Uthwatt, J., in *Hermann* v. *Metropolitan Leather Co., Ltd.* [1942] Ch. 248; 86 SOL. J. 49, approved in the House of Lords in *Westminster Bank, Ltd.* v. *Edwards* [1942] A.C. 529; 86 SOL. J. 232, concerning "multiple leases." Under s. 15 of the Landlord and Tenant (War Damage) Act, 1939, there are special provisions for "multiple leases." Shortly, they are to the effect that after disclaimer any person interested may apply to the county court; that court then has to decide whether it is "equitable" to allow the whole lease to be disclaimed or whether it ought to be severed and to be continued in respect of undamaged parts of the land demised while being disclaimed as to the damaged parts. The county court has full powers to make such directions as to the future tenure, upon severance, as may be just. The difficulty is to know what a "multiple lease" may be. That expression is defined in s. 24 as meaning "a lease comprising buildings which are used or adapted for use as two or more separate tenements." The effect of the two decisions mentioned above is shortly as follows: If the lease is a multiple lease and s. 15 has to be applied, the question what is "equitable" has to be decided broadly. The court must look at all the circumstances (*per* Uthwatt, J., at [1942] Ch. 251); "'Equitable' has no technical sense": *per* Viscount Simon, L.C., at [1942] A.C. 535. In the case before him, Uthwatt, J., held that it would not be equitable to refuse to allow disclaimer of the whole where the tenants had tried to carry on their business in the undamaged part and had found that they could not do so. Second, the question whether premises are "used or adapted for use as two or more separate tenements" is a question of fact for the court of first instance, normally the county court. Third, Uthwatt, J., held that *either* such use *or* "adaptation" for such use is enough. The phrases are alternatives. The learned judge expressed doubt as to what "adaptation for use" might mean. Fourth, the noble and learned lords expressed the opinion, though without actually deciding, that the facts tending to show "use or adaptation for use as two separate tenements" are those existing when the case has to be decided and not those existing at the date of the demise: at pp. 536, 539. Finally, Uthwatt, J., intimated, at p. 253, that the Act is substantially one for the relief of tenants by throwing "the burden of the loss which results from war damage . . . on the landlord and not on the tenant," and it was largely on that point that he based his view of what was equitable in the circumstances before him. This consideration is not decisive, of course, on all matters, but may turn the scale in a doubtful case.

Landlord and Tenant Notebook.

Parsonage Houses and the Rent Acts.

Bishop of Gloucester v. *Cunnington*, in which a county court held that the tenant of a vicarage was entitled to the protection of the Rent, etc., Restrictions Acts, was reported in our "County Court Letter" of 15th August, 1942 (86 SOL. J. 230), and discussed in the course of an article entitled "Voidable Lease of Controlled Dwelling" in the "NoteBook" of 29th August, 1942 (86 SOL. J. 247). Some of us may have then asked ourselves what would be the best line of attack if an appeal were to be made. If the premises were a dwelling-house, and were let as a dwelling-house, *prima facie* the Acts applied. Could it be suggested that a vicarage was not a dwelling-house for the purposes of the Acts, as they are concerned with such properties as are normally let and let as residences only? The outlook would not be hopeful, for there are many instances of protected residences which are used by their occupiers for the purposes of their businesses. Might one argue that the terms of the necessary episcopal licence (in this case, apparently, the incumbent was authorised to let, and did let, until his own incumbency should cease) were respected by the Acts? There is nothing in them to support such a contention: true, sub-letting without consent is now a ground for possession, but this was not a case of sub-letting, and it has not yet been put forward that a landlord may conditionally authorise sub-letting and claim possession if the condition be infringed. "If the tenant without the consent of the landlord has . . . assigned or sub-let the whole of the dwelling-house . . ." are the relevant words of para. (*d*) of Sched. I of the 1933 Act.

However, the Court of Appeal has now reversed the decision of the county court judge, and has done so on the broad ground that it was impossible to suppose that the Legislature intended that, where a parsonage house had been let to a tenant, he was to have the benefit of the Rent Restrictions Acts. The case was one to which the maxim "*Generalia specialibus non derogant*" applied.

The first of the earlier "special" enactments mentioned in the judgment of Lord Greene, M.R., was 21 Hen. VIII, c. 13, which provided that a person having the cure of souls must reside in the parsonage house in the parish. This was modified by the Pluralities Act, 1838, ss. 32 and 59 of which governed the present position.

Section 32 commences: "Every spiritual person holding any benefice shall keep residence on his benefice, and in the house of residence (if any) belonging thereto"; but goes on to mention absence without "such licence or exemption as in this Act allowed for that purpose." By s. 33 a licence may be granted if the parsonage house is unfit. Section 42 deals with the manner of petitioning for a licence. Section 43 authorises the grant of licences, which may sanction residence out of the proper house of residence or out of the limits of the benefice. The grounds on which a licence may be granted are enumerated, and relate either to the circumstances of the applicant (illness, etc.) or those of the house (unfitness for residence; or no house at all): there is no general right to grant licences at discretion in this section. But the next section authorises bishops to grant licences in other cases if they think expedient; confirmation, however, by the archbishop is essential.

Section 54 provides for the enforcement of residence by monition requiring the spiritual person concerned forthwith to proceed to and reside on his benefice; and the existence of this power played an important part in the case. For, by s. 59, any agreement made for the letting of the house of residence belonging to any benefice, to which house of residence any spiritual person may be required, by order of the bishop, to proceed and reside therein, shall contain a condition for avoiding the same upon a copy of such order being served upon the occupier thereof, or left at the house, and otherwise shall be null and void.

I have summarised the provisions of the Pluralities Act in order to show that they virtually contain a code regulating the use, including the letting, of parsonage houses; and, the "*specialia*" being such, it is easy to follow the reasoning of the Court of Appeal. For, undoubtedly, the provisions of the Rent Acts are relatively "general," and, whether any intention can be imputed to the Parliament which passed the first Rent Act or not, it seems sound to say that that body would have left parsonage houses out if the point had been put to it.

The maxim "*generalia specialibus non derogant*" is at least as old as Coke's time; in *Gregory's Case* (1596), 6 Co. Rep. 19*b*, a statute of Philip and Mary prohibiting the weaving of woollen cloth by persons who had not served their apprenticeship was held not to have been abrogated by a statute of Elizabeth. "A later statute in the affirmative shall not take away a former Act; and *eo potius* if the former be particular, and the latter general." The principle was held to apply in the case of Church Building Acts in *Fitzgerald* v. *Champneys* (1861), 30 L.J. Ch. 777. A more recent example is that afforded by *R.* v. *Minister of Health, ex parte Villiers* [1936] 2 K.B. 29, in which it was held that special provisions in the London Open Spaces Act, 1893, relating to Hackney Marshes had not been overridden by the more general provisions of the Housing Act, 1925; accordingly, the respondent was prohibited from consenting to an appropriation, approving an exchange, and holding an inquiry in connection with a housing scheme prepared under the later statute which was inconsistent with perpetual use for exercise and recreation provided for by the earlier one. In his judgment Lord Hewart did not go as far back as Coke, but was content to accept the statement of Stirling, J., in *Re Smith's Estate, Clements* v. *Ward* (1887), 35 Ch. D. 589: "Where there is an Act of Parliament which deals in a special way with a particular subject-matter, and that is followed by a general Act of Parliament which deals in a general way with the subject-matter of the previous legislation, the court ought not to hold that general words in such a general Act of Parliament effect a repeal of the prior and special legislation unless it can find some reference in the general Act to the prior and special legislation."

It cannot be denied that this fits the case we are dealing with. The Pluralities Act, 1838, undoubtedly deals in a special way with the letting of a special kind of dwelling-house, and the Rent Acts deal in a general way with the letting of dwelling-houses. It is, of course, remarkable that it was not till 1942 that the discovery was made of a class of dwelling not subject to those Acts. Whether further discoveries will be made is a point on which I do not propose to commit myself.

CORRECTION.

At p. 9 of last week's issue, in the "Current Topic" entitled "The Societies and Workmen's Compensation," the words "disputes and court proceedings form only 14 per cent. of the claims handled" should have read: "disputes and court proceedings form only 0·14 per cent. of the claims handled."

To-day and Yesterday.

LEGAL CALENDAR.

January 11.—On the morning of the 11th January, 1769, "John Andrew Martin, for breaking open the house of Mr. Knight in Noble Street and robbing it of jewellery goods to a very considerable amount, was pursuant to his sentence executed at Tyburn. He was a Dane by birth, and two Danish ministers with the ordinary and another clergyman attended him till his irons were knocked off. Just before he was turned off he made a short speech to the spectators exhorting them to take warning by his untimely end. He was a most consummate villain and had ruined many families."

January 12.—On the 12th January, 1857, Lord Campbell recorded in his diary: "As I suspected, Cockburn's abjuration of the bench turned out to be only *nolo episcopari*. He is now Lord Chief Justice of the Common Pleas, and as yet without a peerage. I have no doubt that he will make a very respectable judge. He is a man of great intellectual ability; he is capable of keen, though not as yet continuous, application; he is ambitious of fame; and he has very courteous manners both in public and in private."

January 13.—During the last two years of Lord Mansfield's life he was often absent from court through illness, and Mr. Justice Buller took the lead in the King's Bench. The old Chief Justice pressed his claims to succeed him, and the Government long hesitated in their decision. Pitt remembered a trial at Bodmin affecting the political rights of the Buller family in a pocket borough, when it was said that he showed undue partiality for his connections. Lord Thurlow said he had wavered "between the corruption of Buller and the intemperance of Kenyon." Finally in 1788, Kenyon, the Master of the Rolls, though inferior as a lawyer, was given the office. Buller was solaced by being made a baronet on the 13th January, 1790.

January 14.—In October, 1801, after the French armies had been expelled from Egypt and the war with Napoleon had reached a condition of stalemate, peace negotiations led to the signing of a preliminary treaty, which fructified five months later in the abortive Peace of Amiens. Meanwhile the seamen in the "Temeraire" belonging to the Bantry Bay Squadron, hearing that they were to be ordered to the West Indies, decided that, the war being over, they would not sail. An ugly situation ensued, as they were ready to kill their officers if force was used against them. The men in the other ships had promised support, and a state of open revolt had almost been reached when the firmness of Admiral Campbell and Captain Eyles and the loyalty of the Marines restored order. The mutineers were tried by court martial in batches on board the "Gladiator" at Portsmouth. On the 14th January, 1801, the trial of six men opened. The proceedings lasted three days and five of them, being found guilty, were condemned to death. The sixth was found part guilty and sentenced to 200 lashes. All the prisoners exclaimed: "The Lord's will be done!" One asked Admiral Campbell to come to him and with tears handed him his will, saying: "Look at this paper. I have a wife and child. See if this will have any effect in their favour when I am gone. The Lord have mercy on my soul!" He still declared his innocence of most of the charges against him.

January 15.—On the 15th January, 1753, "at the Old Bailey Sessions received sentence of death John Briant, Patrick Nugent, William Baldwin, Joseph Hall and Timothy Murphy for forging a seaman's will and defrauding Thomas Noder of £37 12s.; twenty men were sentenced for transportation, one branded, one whipped."

January 16.—Mary Carelton, the daughter of a Canterbury Cathedral choirman, "had she been virtuously inclined was capable of being the phœnix of her age," for she was beautiful, fascinating, lively and ingenious. Instead she led a crowded, adventurous life, brilliantly fraudulent, and died at Tyburn in her thirties. "Amadis of Gaul," "Parismus and Parismenus" and the romances which made Don Quixote a knight errant turned her to crime. Revolting against the prosaic, she deserted her shoemaker husband and bettered herself by marrying a surgeon. Tried at Maidstone for bigamy she managed to get herself acquitted and went abroad. In Germany she turned the head of a wealthy old gentleman, accepted a load of valuable presents from him while eluding his matrimonial advances, and after robbing her landlady on a grand scale returned to England in the character of a German princess, flying from her father for marrying without his consent a man whom he had on that account caused to be killed. While exploiting this imposture she married yet again, was prosecuted at the Old Bailey and once more ingeniously contrived to be acquitted. Her celebrity opened up to her a career on the stage, but she had "too much mercury in her constitution to be long settled in any way of life whatsoever." For the rest of her life she lived by her wits, inventing tricks to cheat all comers, lovers, landladies, lawyers and tradespeople, some on a large scale, some on a small. Her favourite role was that of a persecuted heiress. Eventually she was transported to Jamaica for stealing a silver tankard. In two years she was back in England, again as an heiress, and to set herself up she married a wealthy Westminster apothecary, robbing him of £300 before she left him. At last she was caught and brought to the Old Bailey on the 16th January, 1673, for returning from transportation. This misfortune proved fatal and she was hanged a week later.

January 17.—On the 17th January, 1776, Daniel and Robert Perreau, twin brothers, were hanged at Tyburn for forgery. Dressed exactly alike in deep mourning, they drove to execution in a coach. They exchanged bows with the sheriffs, prayed, and clasped each other's hands just before the cart was drawn away from beneath them. They protested their innocence and most people believed them. Indeed, seventy-eight leading bankers and merchants had signed a fruitless petition for mercy.

THE TAILOR'S REVENGE.

"Beachcomber" in *The Daily Express* has lately been parodying the form of legal accounts:

"To endorsing stamp	£3	15	4
To stamping endorsement	£4	18	1
To stamp		6	8
To endorsement	£1	17	10½
To engrossing endorsement	£5	0	0"

and so on. But it may be doubted whether any parody has ever excelled that of the tailor who, having received a complicated account from his attorney retaliated in sending in a bill for a suit of clothes:

"To measuring and taking orders for a suit of clothes			6s. 8d.
Warrant and instructions to my foreman for executing the same			6s. 8d.
Going three times to the woollen drapers ..			10s. 0d.
Fees to the woollen draper	£4	4	0
Cutting out the cloth			6s. 8d.
Materials for working	£1	1	0
Trying on the suit			13s. 4d.
Alterations and amendments	£1	8	4
Entering this account in my daybook ..			10s. 6d.
Posting it in my ledger			6s. 8d.
Engrossing the same			13s. 4d.
Writing to the button merchant			6s. 8d.
Filing his decoration, 16 sheets			16s. 8d.
Fees for the button merchant			2s. 8d.
Removing the suit from my house to Gray's Inn	£1	1	0
Removing it by certiorari from Gray's Inn to Surrey at your country house	£1	6	0."

Books Received.

The Secretarial Handbook. By EDWARD WESTBY-NUNN, B.A., LL.B., of Lincoln's Inn, Barrister-at-Law. Revised Fourth Edition. 1942. Demy 8vo. pp. 176 (with Index). London: The Solicitors' Law Stationery Society, Ltd. 10s. 6d. net.

Rayden's Practice and Law in the Divorce Division. Fourth Edition. Consulting Editors: NOEL MIDDLETON, of Gray's Inn, Barrister-at-Law, and C. T. A. WILKINSON, Registrar of the Probate and Divorce Division. Editors: J. F. COMPTON MILLER, of the Inner Temple, Barrister-at-Law, and F. C. OTTWAY, of the Probate and Divorce Registry. 1942. Royal 8vo. pp. cxxvii, 782 and (Index) 117. London: Butterworth and Co. (Publishers), Ltd. 67s. 6d. net.

Paterson's Licensing Acts. 1943 Supplement to Fifty-first Edition. By J. WHITESIDE, Solicitor, and Clerk to the Justices for the City and County of the City of Exeter. pp. xi and (with Index) 59. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

Loose-Leaf War Legislation. Edited by JOHN BURKE, Barrister-at-Law. 1942 Volume, Part II. London: Hamish Hamilton (Law Books), Ltd.

The Prime Minister recently made the following broadcast appeal for books and magazines for members of the Forces:—

For the men and women of the Forces at home and abroad I make an appeal to which every family in the Kingdom can respond. I do not ask for money. I ask only for books, magazines and periodicals. If you had seen, as I have seen on my many visits to the Forces, and particularly in the Middle East, the need for something to read during the long hours off duty and the pleasure and relief when that need is met, you would gladly look, and look again, through your bookshelves and give what you can. If you hesitate to part with a book which has become an old friend, you can be sure that it will be a new friend to men on active service. The procedure is quite simple. Almost any post office will take your books and magazines if handed in unwrapped, unstamped and unaddressed. They will then be distributed to all the services where most required. Malta, the Middle East, Iceland, and a dozen other places abroad will welcome your gifts, and there are lonely stations at home to be supplied. Will you contribute from your shelves, and remember when you buy a book or magazine that there are many waiting to read it after you?

New Year Legal Honours.

We should like to add the following names to the list of legal honours published at p. 13 of last week's issue :—

KNIGHTS BACHELOR.

Mr. WALTER PALMER COBBETT, C.B.E. For public services in Manchester. Admitted 1893.

Alderman JOHN EDWARD DAW, J.P., Chairman, Devon County Council. Admitted 1887.

Mr. EDWIN SAVORY HERBERT, Director, Postal and Telegraph Censorship Department, Ministry of Information. Admitted 1920.

ORDER OF THE BATH.—K.C.B.

Sir (WILLIAM) WILSON JAMESON, Chief Medical Officer, Ministry of Health and Board of Education. Called by Middle Temple, 1922.

ORDER OF THE INDIAN EMPIRE.—C.I.E.

Mr. T. B. JAMESON, I.C.S., District Magistrate, Chittagong. Called by Inner Temple, 1936.

Mr. J. A. SAMUEL, Secretary, Legislative Department, Bihar. Called by Gray's Inn, 1912.

ORDER OF THE BRITISH EMPIRE.—O.B.E.

Major H. A. GOLDEN, Chief Constable and A.R.P. Controller, Shropshire. Admitted 1935.

ORDER OF THE BRITISH EMPIRE.—M.B.E.

Mr. F. W. BULL, Deputy A.R.P. Controller, Oldbury. Admitted 1939.

Mr. A. T. CHITTOCK, Commander, Norwich City Special Constabulary. Admitted 1901.

Mr. J. S. WADE, Divisional Commander, City of London Special Constabulary. Admitted 1910.

Obituary.

MR. J. B. DYNE.

Mr. John Bradley Dyne, barrister-at-law, of 5, New Square, Lincoln's Inn, W.C.2, died on Monday, 4th January, aged sixty-nine. Mr. Dyne was called by Lincoln's Inn in 1900.

MR. R. W. GRAY.

Mr. Richard Whitmarsh Gray, solicitor, died on Wednesday, 30th December, aged sixty-three. Mr. Gray was admitted in 1905, and had been solicitor to Messrs. Barclay, Perkins and Co., Ltd., for thirty-seven years.

MR. S. J. GREY.

Mr. Samuel John Grey, solicitor, of Messrs. S. J. Grey & Willcox, solicitors, of Church Street, Birmingham, died on Thursday, 31st December, aged sixty-four. Mr. Grey was admitted in 1903, and from 1934 to 1936 was Lord Mayor of Birmingham.

MR. J. V. T. LANDER.

Mr. John Vernon Thomas Lander, solicitor, of Messrs. Lander and Son, solicitors, died on Tuesday, 22nd December, aged eighty-seven. Mr. Lander was admitted in 1881, and had been coroner for Shropshire for fifty years. He recently retired from the position of registrar of Wellington County Court after fifty-two years' service.

MR. J. PRICHARD.

Mr. James Prichard, solicitor, of Messrs. Ward, Bowie & Co., solicitors, of Clement's Inn, Strand, W.C.2, died on Sunday, 10th January, aged seventy-six. Mr. Prichard was admitted in 1922.

MR. A. QUAYLE.

Mr. Arthur Quayle, solicitor, and Clerk to the Southport Borough Justices, died on Friday, 8th January, aged sixty-five. Mr. Quayle was admitted in 1902.

MR. W. R. MOON.

Mr. William Robert Moon, solicitor, of Messrs. Moon, Gilks and Moon, solicitors, of Bloomsbury Square, W.C.1, died on Saturday, 9th January, aged 74. Mr. Moon was admitted in 1891. He was one of the best goalkeepers who ever played for England. He played four times against Scotland, 1888 to 1891, and three times against Wales, 1888 to 1890.

CITY OF LONDON SOLICITORS' COMPANY.

The Master (Mr. Arthur T. Cummings) entertained the Court and some distinguished guests on Tuesday, 5th January, 1943, at the Grocers' Hall, Princes Street, E.C.2, at lunch on the occasion of the election of one of its members, Mr. G. Stanley Pott, as President of The Law Society. Among others present were the following: Rt. Hon. Lord Greene, the Master of the Rolls, the Rt. Hon. Lord Justice Scott, Sir Richard Livingstone, President of Corpus Christi College, Oxford, Sir Stanley Marchant, Principal of the Royal Academy of Music, Mr. H. St. J. Field, K.C., Mr. T. G. Lund, Secretary of The Law Society, Major the Reverend R. M. La Porte Payne, Hon. Chaplain, Mr. J. Mewburn Levien, Mr. Scott Arnott, Major G. T. Harley Thomas, Mr. L. C. Bullock, Senior Warden, and Mr. H. A. Easton, Junior Warden.

Notes of Cases.

HOUSE OF LORDS.

London Brick Company, Ltd. *v.* Robinson.

Viscount Simon, L.C., Lord Atkin, Lord Thankerton, Lord Russell of Killowen and Lord Romer. 15th December, 1942.

Workmen's compensation—Workman killed—Widow paid compensation under Lord Campbell's Act—Infant son claims under Act of 1925*—Amount payable to infant son—Workmen's Compensation Act,* 1925 (15 & 16 *Geo.* 5, *c.* 84), *s.* 8.

Appeal from a decision of the Court of Appeal.

The Workmen's Compensation Act, 1925, s. 8, provides: "The compensation under this Act where death results from the injury shall be a lump sum . . . together with, if the workman leaves a widow or other member of his family . . . wholly or partially dependent upon his earnings and in addition leaves one or more children under the age of fifteen so dependent an additional sum (hereinafter referred to as the children's allowance) . . ." The workman met with an accident on the 20th December, 1940, in the course of his employment with the appellant company and died as a result of his injuries. He left a widow and the respondent, his son aged one year, surviving him, who were both wholly dependent upon him. The widow elected not to take proceedings under the Workmen's Compensation Act, 1925, but took proceedings for damages under Lord Campbell's Act and the Law Reform (Miscellaneous Provisions) Act, 1934, her claim being settled for £1,750. The workman's infant son, through his next friend, made a claim under the Workmen's Compensation Act. The lump sum payable under s. 8 was £300. It was admitted that the infant was entitled to this sum. He also claimed in addition £228 12s., being the child's allowance under that section. The county court judge awarded the infant both sums. The Court of Appeal affirmed his decision. The company appealed. Their lordships took time.

VISCOUNT SIMON, L.C., said that in the case of a workman who was injured he could claim under the Act or independently of the Act, but he could not do both. When, however, owing to the workman's death from the injury, the claim against the employer was made by the workman's dependents, and there were more than one of them, a complication arose. The House of Lords had decided in *Kinneil Cannel and Coking Coal Co.* v. *Sneddon* [1931] A.C. 575, that the provisions of the Act did not mean that the employer could not in any circumstances be under liability to pay in two independent proceedings. The matter was taken a stage further by the House in *Avery* v. *London and North Eastern Railway Co.* [1938] A.C. 606, where it was held that in assessing the damages recoverable by the widow under the Fatal Accidents Acts and the Employers' Liability Act, 1880, it was right to ignore the fact that the children were claiming under the Workmen's Compensation Act, 1925, and, similarly, that the amount of the compensation that the children would receive would not be affected by the fact that the widow had exercised her option to claim damages independently of the Act. In the present case, reading the words of s. 8 literally, the condition there prescribed was satisfied. The workman did leave a widow and a child under sixteen, both dependent on his earnings. The appellants contended that the reference to a widow in the section was to a widow who was making a claim under the Act. The words of the section were not obscure or ambiguous, and there was no justification for construing the phrase "if the workman leaves a widow" as if it ran "if the workman leaves a widow who is claiming compensation under the Act." The employer's liability must be calculated according to the language of s. 8. The "lump sum" and "the children's allowance" constituted a single sum, and that was the amount for which, in the circumstances, the employers were liable. The liability was not discharged until the total sum was paid. The circumstance that, owing to the widow's choice of remedy, the only person to receive the total sum was the infant dependent, was fortunate for the infant, but did not justify the award to him of less than the total amount for which the appellants were liable. The appeal must be dismissed.

The other noble and learned lords concurred.

COUNSEL: *Sellers*, K.C., and *W. H. Duckworth*; *Beney*.

SOLICITORS: *Barlow, Lyde & Gilbert*; *Chamberlain & Co.*, for *Mellows and Sons*, Peterborough.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

Nelson *v.* Hannam.

Lord Greene, M.R., and du Parcq, L.J. 20th November, 1942.

Mortgage—Lease with option to purchase reversion charged—Mortgagee exercises option and takes conveyance of fee—Mortgagor claims conveyance of reversion on payment of purchase price.

Appeal from a decision of Farwell, J. (*ante*, p. 339).

By a building lease made in 1936 certain premises were demised to the defendants for ninety-nine years. The lease conferred on the defendants an option to purchase the freehold reversion for £5,377 10s., such option to be exercised before the 25th March, 1941. By a mortgage dated the 15th October, 1937, the defendants mortgaged the leasehold premises in favour of the plaintiff, and by a separate deed on the same date they assigned the benefit of the option to the plaintiff. On the 4th March, 1941, the plaintiff started proceedings for foreclosure, and in due course an order for foreclosure *nisi* was made. In the meantime, on the last day on which the option was exercisable, it was exercised by the plaintiff. He duly paid the sum of £5,377 10s. in accordance with the terms of the option and the lessor conveyed the freehold reversion to him. By this summons in the foreclosure proceedings, the defendants asked for a declaration that upon redemption of the mortgaged premises and payment of the purchase price

of the freehold reversion, with interest, they were entitled to require a conveyance of the freehold reversion to themselves. Farwell, J., held that the plaintiff was entitled to exercise the option and dismissed the summons. The defendants appealed.

LORD GREENE, M.R., said that the claim of the mortgagee in the present case was contrary to the fundamental principles upon which the view of courts of equity with regard to mortgages was based. The option was part of the security. The parties entered into this transaction upon the footing that the mortgagee should have the right, if he chose to do so and to find the money, to improve his security by acquiring the reversion. It was argued that the option was a mere collateral advantage. A collateral advantage to be valid must be collateral. If the advantage was one which enabled the mortgagee to keep, and retain, as against the mortgagor, part of the mortgaged property it would not be collateral. If a mortgagor mortgages an option to a mortgagee and his option is only exercisable on the payment of a sum of money, the mortgagor enters into the transaction on the footing that, if the mortgagee choose to do so, he is to be entitled to improve or perfect his security by making that expenditure, and he knows that if the mortgagee takes that course, then the mortgagor will only be entitled to redeem if he reimburses the mortgagee what he has spent. The appeal must be allowed.

DU PARCQ, L.J., agreed.

COUNSEL: *Raymond Jennings; Romer*, K.C., and *L. M. Jopling.*

SOLICITORS: *E. M. Tringham*, for *Raymond E. Frearson*, Skegness; *Glover, Scott & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

APPEALS FROM COUNTY COURT.

Cumming *v.* Danson.

Lord Greene, M.R., Scott and MacKinnon, L.JJ. 27th November, 1942.

Landlord and tenant—Rent restrictions—Possession of dwelling-house asked for—Alternative accommodation offered—"Reasonable to make such an order"—Matters to be considered—Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 & 24 *Geo.* 5, *c.* 32), *Sched. I, para.* (*h*); *s.* 3 (1) (*b*).

Plaintiff's appeal from a judgment of His Honour Judge J. H. D. Hurst, given at Aylesbury County Court.

The plaintiff had asked for possession of a dwelling-house which was in the occupation of the defendant under a lease which had been ended by notice, and the house fell within the protection of the Rent Restrictions Acts. The plaintiff also owned a cottage which was close by the house, and was inhabited by herself and some refugees, one of whom was an invalid. The plaintiff also proposed bringing to the cottage her invalid sister and her sister's husband to live with her, so that the cottage, already overcrowded, would become even more so. The house was very much larger than the cottage. The plaintiff offered to exchange the house for the cottage, and on the defendant's refusing, commenced these proceedings. The plaintiff based her claim on s. 3 (1) (*b*) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, which provides that no order for possession of a dwelling-house to which the Acts apply shall be made unless the court considers it reasonable to make such an order, and either (*a*) the court has power to do so under Sched. I to the Act, or (*b*) the court is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect. Paragraph (*h*) of the schedule gives one of the sets of circumstances in which the court may make an order without proof of suitable alternative accommodation, i.e., where the dwelling-house is reasonably required by the landlord for occupation as a residence for himself or any son or daughter of his over eighteen years of age, or for his father or mother. A proviso to para. (*h*) precludes the making of an order under it unless the court is satisfied that having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord or the tenant, greater hardship would be caused by granting the order or judgment than by refusing to grant it. The learned county court judge referred to Sched. I of the 1933 Act, and after saying that the plaintiff must satisfy him on the point of reasonableness, he went on to say that there was a further limb of the section which had to be satisfied, he had to be satisfied that greater hardship would be caused by making an order for possession than by refusing it. The learned county court judge refused to grant an order for possession.

LORD GREENE, M.R., said that the judge in his judgment started with a misapprehension as to the nature of the application, because he clearly treated it as if it was an application under para. (*h*) of Sched. I, and not, as it was, an application governed by s. 3 (1) (*b*). Greater hardship was only relevant where para. (*h*) of the Schedule was invoked. In considering reasonableness under s. 3 (1), the duty of the judge was to take into account all relevant circumstances as they existed at the date of the hearing, giving weight as he thought right to the various factors as a man of the world in a broad common-sense way. The learned county court judge misdirected himself on the law in saying that the plaintiff had the duty of satisfying him that it was a reasonable application. The language of the subsection was that she had to satisfy him that it was reasonable to make the order. He went on to say that that meant, that in considering her circumstances as to whether it was reasonable to say that she needed the house, he had to consider generally whether it was reasonable to make the order in her favour. With respect to the judge, it meant nothing of the kind; the question whether she needed the house might be a relevant question when factors had to be weighed; what importance was to be given to it was a totally different matter. The judge said that he was not entitled to consider the refugees or her sister and the sister's husband in considering whether the appellant needed the house, because they were not persons in sufficient proximity to her from a family point of view. There was nothing in the relevant parts of the Acts to exclude that type of inhabitant of a house. It was not a case under para. (*h*), where the persons to be considered were relatives. In cases where accommodation or overcrowding in a house was a relevant question to be taken into consideration, the facts as they existed must be taken into account. There must be a new trial, because there were questions remaining to be decided, questions of fact as to the hardship, if any, of compelling the tenant to take the alternative accommodation, questions possibly as to whether or not he had expended money on the house, whether the alternative accommodation satisfied the definition in the Act, and the general question whether or not it was reasonable in all the circumstances to make an order. Nothing that his lordship had said must be taken as indicating any view one way or the other on these questions.

SCOTT, L.J., agreed, and added that there was a difference in the Act between an application where alternative accommodation was offered and one where it was not offered. The measure of reasonableness to be established by the landlord was much smaller where alternative accommodation was offered than where it was not offered

MACKINNON, L.J., concurred.

Appeal allowed. New trial ordered.

COUNSEL: *G. H. Crispin; S. Lincoln.*

SOLICITORS: *Rubinstein, Nash & Co.; William P. Webb.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re Hawkins; King *v.* Hawkins.

Farwell, J. 9th December, 1942.

Will—Income tax—Direction to pay outgoings in respect of dwelling-house—Whether a direction for the payment of "a stated amount"—Finance Act, 1941 (4 & 5 *Geo.* 6, *c.* 30), *s.* 25.

Adjourned summons.

The testator by his will directed his trustees to permit his wife to reside rent free at E. Hall, his trustees paying out of his other estate all rates, taxes and other outgoings and keeping E. Hall in good repair and condition and properly insured against fire in the full value thereof. He also directed them to pay to his wife, as long as she should keep any of his dogs and horses, clear of all deductions, including income tax, 3s. a week for each dog and 15s. a week for each horse. The testator died in 1930. By this summons the trustees of his will asked whether the payments for rates, taxes and other outgoings in respect of E. Hall and the payments to the testator's widow in respect of his dogs and horses ought to be reduced under s. 25 of the Finance Act, 1941. Section 25 provides: "... any provision, however worded, for the payment ... of a stated amount free of income tax ... being a provision which (*a*) is contained in ... any will or codicil ... and (*b*) was made before the 3rd September, 1939 ... shall ... have effect as if for the stated amount there were substituted an amount equal to twenty twenty-ninths thereof."

FARWELL, J., said that it was not possible to say that the provision for payment of rates, taxes, outgoings, repairs and insurance was the provision for the payment of "a stated amount." It was an amount which was ascertainable in each year, but it was not a "stated amount," inasmuch as the amount must vary according to the repairs which were done and other matters in connection therewith. Accordingly, s. 25 did not apply. On the other hand, the provision with regard to the dogs and horses was a provision for payment of a definite sum, as the amount could be ascertained by finding out how many dogs and horses there were. The second provision, therefore, was within s. 25.

COUNSEL: *Wilfrid Hunt; Baden Fuller; Salt; J. V. Nesbitt; Winterbotham.*

SOLICITORS: *Langlois, Harding, Tate & Johnson; Garrard, Wolfe & Co.; G. H. H. Richards.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Rules and Orders.

S.R. & O., 1943, No. 9/L.1.

SUPREME COURT, ENGLAND.—PROCEDURE.

THE RULES OF THE SUPREME COURT (ADDRESS FOR SERVICE), 1943.

DATED JANUARY 1, 1943.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by the Administration of Justice (Emergency Provisions) Act, 1939, and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules of Court under Section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925:—

1. The following Order shall be substituted for Order IV:—

"ORDER IV.

INDORSEMENT OF ADDRESS.

1. *Where plaintiff sues by solicitor.*] (1) The solicitor of a plaintiff suing by a solicitor shall indorse upon the writ of summons the address of the plaintiff and also his own name or firm and his own place of business within the jurisdiction which shall be an address for service where notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications, if not required to be served personally, may be left for him.

(2) Where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

2.—*Where plaintiff sues in person.*]—(1) A plaintiff suing in person shall indorse upon the writ of summons his place of residence and his occupation.

(2) If his place of residence is within the jurisdiction it shall be an address for service, and, if his place of residence is not within the jurisdiction, or if he has no place of residence, the plaintiff shall indorse on the writ of summons a proper place within the jurisdiction which shall be an address for service where notices, pleadings, orders, summonses, warrants and other documents, proceedings and written communications, if not required to be served personally, may be left for him.

3. *Where notice is served in lieu of writ.*] Where notice of a writ of summons is to be served on a defendant in pursuance of Order XI, Rule 6, the indorsements required by the preceding Rules of this Order shall be made both on the writ and on the notice.

4. *Proceedings not commenced by writ.*]—Where proceedings are commenced otherwise than by writ of summons, the preceding Rules of this Order shall apply to the process by which the proceedings are originated as they apply to a writ of summons."

2. In Order XII, Rule 9 (1), the words "(which, in the csae of a writ issued out of a district registry, must be the address for service within the district)" shall be omitted.

3. The following Rules shall be substituted for Rules 10 and 11 of Order XII:—

"10.—(1) The solicitor of a defendant appearing by a solicitor shall state in the memorandum of appearance his place of business within the jurisdiction which shall be an address for service.

(2) Where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

11. A defendant appearing in person shall state in the memorandum of appearance his place of residence which shall be an address for service, or if he has no residence within the jurisdiction, a place within the jurisdiction which shall be an address for service."

4. The following paragraph shall be added to Rule 5 of Order XII:—

"(2) If an appearance is entered in London by or on behalf of a defendant to a writ issued in a district registry, the memorandum of appearance required by Rules 8 and 8A of this Order shall contain a statement that such defendant neither resides nor carries on business within the district of that district registry."

5. These Rules may be cited as the Rules of the Supreme Court (Address for Service), 1943, and shall come into operation on the 1st day of February, 1943.

Dated the 1st day of January, 1943. *Simon*, C.

We concur. *Caldecote*, C.J.
Greene, M.R.

War Legislation.

Statutory Rules and Orders, 1942 and 1943.

E.P. 2636. **Apparel and Textiles.** General Licence, Dec. 28, *re* Clogs.

E.P. 2666. Apparel and Textiles. Household Textiles (Manufacture and Supply) (No. 3) Directions, Dec. 30.

E.P. 1898. **Coal** (Charges) (Amendment) (No. 3) Order, Dec. 31.

E.P. 2673. **Conditions of Employment and National Arbitration** (Amendment) (No. 2) Order, Dec. 24.

No. 2678. **Contributory Pensions** (Calculation of Contributions) Amendment Regulations, Dec. 10.

E.P. 2627. **Consumer Rationing** (No. 8) Order, 1941. Directions, Dec. 22, *re* returns and delivery of coupons by registered traders.

No. 2649. **Customs.** Exportation—Revocation of Licences. Order, Dec. 29, revoking licences *re* towels (cotton).

No. 2660. **Export of Goods** (Control) Order, No. 45, Dec. 30.

No. 2679. **National Health Insurance and Contributory Pensions** (War Occupations) Amendment Regulations, Dec. 29.

No. 2658. National Health Insurance (Emergency Duration of Insurance) (No. 2) Regulations, Dec. 7.

No. 2648/S. 71. National Health Insurance Employments (Exclusion and Inclusion) Amendment Order (Scotland), Nov. 3.

No. 2390. National Health Insurance. Exception Regulations (No. 2), Dec. 9.

No. 2659. National Health Insurance (Exempt Persons) Amendment Regulations, Dec. 10.

No. 2665. **National Service** (Miscellaneous) (Amendment) Regulations, Dec. 18.

No. 2661. National Service (Prevention of Evasion) (Amendment) Regulations, Dec. 18.

E.P. 2672. **Police.** Temporary Constables (Emergency) (No. 2) Rules, Dec. 30.

No. 2641. **Purchase Tax** (Exemptions) (No. 5) Order, Dec. 30 (Domestic Furniture).

E.P. 6. **Rationing** (Personal Points) Order, 1942. Amendment Order, Jan. 1.

E.P. 13. **Soap** (Licensing of Manufacturers and Rationing) (No. 2) Order, 1942. General Licence, Jan. 2.

No. 9/L. 1. **Supreme Court, England.** Procedure. Rules of the Supreme Court (Address for Service), Jan. 1.

E.P. 2655. **Traffic on Canals and Inland Navigations** Order, Dec. 28.

No. 2669. **Unemployment Insurance.** Emergency Powers (Amendment) (No. 5) Regulations, Dec. 15.

Circuits of Judges.

WINTER ASSIZES.

South Eastern.—Asquith, J.: Bury St. Edmunds, 19th January; Norwich, 23rd January; Chelmsford, 30th January. Macnaghten, J.: Hertford, 10th February; Maidstone, February 15th; Kingston, 22nd February; Lewes, 1st March.

N. Wales.—Stable, J.: Welshpool, 18th January; Dolgelly, 23rd January; Cærnarvon, 27th January; Beaumaris, 4th February; Ruthin, 9th February; Mold, 16th February. Wrottesley and Stable, JJ.: Chester, 20th February; Cardiff, 6th March.

S. Wales.—Wrottesley, J.: Haverfordwest, 27th January; Lampeter, 1st February; Carmarthen, 4th February; Brecon, 13th February; Presteign, 18th February. Wrottesley and Stable, JJ.: Chester, 20th February; Cardiff, 6th March.

Western.—Lawrence, J.: Dorchester, 18th January; Taunton, 25th January; Bodmin, 1st February. Lawrence and Tucker, JJ.: Exeter, 9th February; Bristol, 17th February; Winchester, 25th February.

Northern.—Singleton, J.: Carlisle, 18th January; Lancaster, 25th January. Singleton and Hallett, JJ.: Liverpool, 1st February; Manchester, 1st March.

Oxford.—Charles, J.: Worcester, 19th January; Gloucester, 26th January; Newport, 2nd February; Hereford, 9th February; Shrewsbury, 16th February. Charles and Oliver, JJ.: Stafford, 25th February. Oliver and Humphreys, JJ.: Birmingham, 16th March.

Midland.—Lewis, J.: Bedford, 19th January; Northampton, 25th January; Leicester, 1st February; Oakham, 9th February; Lincoln, 10th February; Derby, 22nd February; Nottingham, 2nd March. Lewis and Humphreys, JJ.: Warwick, 10th March. Oliver and Humphreys, JJ.: Birmingham, 16th March.

North-Eastern.—Croom-Johnson and Birkett, JJ.: Newcastle, 1st February; Durham, 15th February; York, 25th February; Leeds, 8th March.

Note.—The Lord Chief Justice, Atkinson, Hilbery and Cassels, JJ., will remain in town.

Notes and News.

Honours and Appointments.

The India Office announces that the King has been pleased to appoint the Hon. Khan Bahadur Sir Muhammad Abdur Rahman to be a Judge of the High Court in Lahore upon the retirement of the Hon. Mahadeva Vishnu Bhide.

The Minister of Health, Mr. Ernest Brown, has appointed Col. Frank Medlicott, M.P. for East Norfolk, to be his Parliamentary Private Secretary, in succession to Mr. N. A. Beechman, M.P., who was recently appointed Chief Whip of the Liberal National Party and an assistant Government Whip.

Notes.

The next Quarter Sessions of the Peace for the Borough of Stamford will be held at the Town Hall, Stamford, on Wednesday, 27th January, 1943, at 11.30 a.m.

At the monthly meeting of the Directors of the Solicitors' Benevolent Association, held at The Law Society, Chancery Lane, W.C.2, grants and annuities amounting to £4,504 were made to eighty beneficiaries.

Sir Charles McGrath, clerk to the West Riding County Council and Clerk of the Peace for the West Riding, is to resign his public offices in the West Riding owing to ill health. Sir Charles was admitted in 1901.

The death of Mr. William Thomas Kingdon Walter was announced recently in *The Times*. For fifty-seven years he had been friend and confidential clerk of Messrs. Sole, Sawbridge & Co., solicitors, of 40–41, Old Broad Street, E.C.2.

Mr. A. Gwynne Davies, M.B.E., town clerk of Loughborough and sub-controller of civil defence, has been invited by the Government to go to Newfoundland to advise on civil defence organisation. Mr. Davies was awarded the M.B.E. in the recent New Year honours, and was admitted in 1930.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

Hilary Sittings, 1943.

Rota of Registrars in attendance on

Date.		Emergency Rota.	Appeal Court I.	Mr. Justice Farwell
Monday,	Jan. 18	Mr. Andrews	Mr. Hay	Mr. Reader
Tuesday,	,, 19	Jones	Reader	Blaker
Wednesday,	,, 20	Hay	Blaker	Andrews
Thursday,	,, 21	Reader	Andrews	Jones
Friday,	,, 22	Blaker	Jones	Hay
Saturday,	,, 23	Andrews	Hay	Reader

Date		Group A. Mr. Justice Bennett *Non-Witness*	Mr. Justice Simonds *Witness*	Group B. Mr. Justice Morton *Witness*	Mr. Justice. Uthwatt *Non-Witness*
Monday,	Jan. 18	Mr. Jones	Mr. Hay	Mr. Andrews	Mr. Blaker
Tuesday,	,, 19	Hay	Reader	Jones	Andrews
Wednesday,	,, 20	Reader	Blaker	Hay	Jones
Thursday,	,, 21	Blaker	Andrews	Reader	Hay
Friday,	,, 22	Andrews	Jones	Blaker	Reader
Saturday,	,, 23	Jones	Hay	Andrews	Blaker